

Attorney Docket No. 9790-10

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Baseman et al.

Patent No. 7,622,571 B2

Application Serial No.: 10/573,909

Filed: October 1, 2004

For: *Methods and compositions for Mycoplasma pneumoniae exotoxins*

Group Art Unit: 1645

Issue Date: November 24, 2009

Examiner: S. Davi

Confirmation No.: 9089

Date: January 22, 2010

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

REQUEST FOR REVISION OF PATENT TERM ADJUSTMENT

Sir:

Pursuant to 37 C.F.R. § 1.705(d), Patentee submits this request for revision of patent term adjustment (PTA) for the above-referenced U.S. Patent No. 7,622,571 ('571 patent), issued November 24, 2009. This request is timely submitted within two months of the date the '571 patent issued. Reconsideration of the final PTA calculation to increase total PTA from 205 days to 439 days is respectfully requested.

Pursuant to 37 C.F.R. § 1.705(b)(1), provided herewith is authorization to charge Deposit Account No. 50-0220 in the amount of \$200.00 as the fee set forth under 37 C.F.R. § 1.18(e).

Pursuant to 37 C.F.R. § 1.705(b)(2) provided below is the following statement of facts.

"A" Delay

A first PTO action was due on or before March 8, 2008 (the date that is fourteen months after January 8, 2007, the date on which the application fulfilled the requirements of 35 U.S.C. § 371). The PTO mailed the first non-final Office Action on September 29, 2008, thereby according a PTO delay of 205 days. Patentee does not dispute the PTO's calculation for this "A" delay from March 9, 2008 (the day after the date that is fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. § 371), to September 29, 2008. See 37 C.F.R. §§ 1.702(a) and 1.703(a)(1).

“B” Delay

The present application is a national stage filing under 35 U.S.C. § 371 of International Application No. PCT/US2004/033037, filed October 1, 2004, which claims the benefit of U.S. Provisional Application No. 60.508,607, filed October 3, 2003.

The national stage for the present application “commenced” under the provisions of 35 U.S.C. § 371(b), i.e., upon expiration of 30 months from the priority date of the international application. As a result, the date that the national stage commenced was April 3, 2006 (i.e., 30 months from the priority date of October 3, 2003).

The period beginning on April 4, 2009 (the day after the date that is three years after April 3, 2006, the date that the national stage commenced) and ending November 24, 2009 (the date the patent was issued) is 234 days in length.

Thus, the total “B” delay for this patent should be calculated to be 234 days. The PTO calculated zero days of “B” delay for issuance of a patent more than three years after filing. Patentee respectfully submits that the PTO’s calculation of this “B” delay is incorrect and that the correct PTO delay for issuance beyond three years from filing is 234 days. See 37 C.F.R. §§ 1.702(a) and 1.703(a)(1).

Overlap of “A” and “B” Delay

As detailed above, “A” delay accumulated during the following period:

March 9, 2008 to September 29, 2008

As detailed above, “B” delay accumulated during the following period:

April 4, 2009 to November 24, 2009.

There is no overlap in the “A” delay and the “B” delay.

Applicant Delay

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704.

Terminal Disclaimer

This patent is not subject to a terminal disclaimer.

Conclusion

In consideration of the events described above, the PTA calculation of a total of 205 days for this patent is believed to be incorrect. As such, Patentee respectfully requests recalculation of the PTA for this patent in the following manner:

- 1) Total PTO delay should be calculated as 439 days (i.e., the sum of 205 days of "A" delay and 234 days of "B" delay;
- 2) Total Applicant delay should be calculated as zero days; and
- 3) Total PTA should be calculated as 439 days.

Accordingly, Patentee requests that the '571 patent be accorded the correct total PTA of 439 days.

As noted above, the Commissioner is authorized to charge Deposit Account No. 50-0220 in the amount of \$200.00 as the fee set forth pursuant to 37 C.F.R. § 1.18(e). This amount is believed to be correct. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,

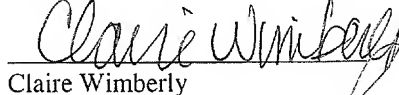


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CERTIFICATION OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on January 22, 2010.


Claire Wimberly